

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

HARRY SMITH, JR. and ROSLYN )  
WOODARD SMITH, Individually and as )  
Administrators of THE ESTATE OF )  
HARRY SMITH, III )

Plaintiffs, )

v. )

CITY OF WILMINGTON, JOHN )  
CIRITELLA, THOMAS DEMPSEY, and )  
MATHEW KURTEN, )

Defendants. )

Case No. 04-1254-GMS

**DEFENDANTS' *FOURTH* MOTION IN LIMINE  
(TO EXCLUDE CERTAIN PURPORTED EXPERT  
CRITIQUES OF THE ACTS OF NON-DEFENDANTS)**

Defendants move to exclude certain purported expert testimony critical of the actions of non-defendants. Plaintiffs have served expert reports criticizing acts of non-defendant police officers and others that can not be attributed to any of the defendants. Plaintiffs' proffered critiques of non-defendants are irrelevant and can serve only to confuse the jury regarding the relevant issues in this case.

The report of plaintiffs' purported expert Joseph J. Stine argues that non-defendant police officers and third-parties failed to act reasonably in the following respects:

- "Failure of the officers who had their vehicle taken without their permission to provide adequate information."
- "Failure of the Police Communications facility to request the proper and pertinent information."
- "Failure of the officers and supervisors involved in the pursuit to ascertain the pertinent information regarding the necessity of a pursuit."

- “Failure of the on duty supervisors, many of whom were actively participating in the pursuit, to exercise their supervisory authority to direct control and terminate the pursuit.”

(Ex. A at 4).

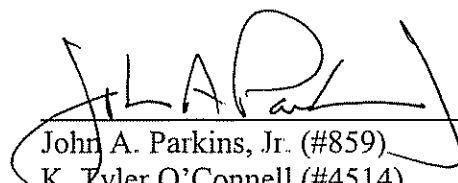
Similarly, the report of plaintiffs’ purported expert Elbert Waters critiques the purported “blunders” of non-defendant police officer Johnny Whitehead at the site of the initial carjacking on 14<sup>th</sup> and Washington Streets. (Ex. B at 7).

None of the above-referenced purported expert critiques of third-parties should be argued to the jury. These critiques of non-defendants have no relevance to any claim or defense in this action. *Cf.* F.R.E. 402; *Schneider v. Fried*, 320 F.3d 396, 404 (3d Cir. 2003) (to be admissible “the expert’s testimony must be relevant for the purposes of the case and must assist the trier of fact.”). There of course is no claim against any of the non-defendants that Stine and Waters critique. There is no theory under which the defendant police officers could be liable for the actions of the critiqued non-defendants. Similarly, the Amended Complaint does not allege any claim under which the City of Wilmington could be liable for the acts of non-defendants. Indeed, the Amended Complaint contains no allegations at all with respect to the actions of the non-defendants that plaintiffs critique. Plaintiffs’ proffered critiques of non-defendants therefore will serve only to waste time on irrelevant issues and potentially lead to jury confusion regarding the relevant issues in this case.

For the foregoing reasons, the defendants respectfully request that their Motion *In Limine* To Exclude Certain Purported Expert Critiques of the Acts of Non-Defendants be granted.

OF COUNSEL:

Rosamaria Tassone  
City of Wilmington Law Department  
City/County Building, 9th Floor  
800 N. French Street  
Wilmington, Delaware 19801  
302-576-2175



John A. Parkins, Jr. (#859)  
K. Tyler O'Connell (#4514)  
Richards, Layton & Finger  
One Rodney Square  
P. O. Box 551  
Wilmington, Delaware 19899  
302-651-7700  
Parkins@rlf.com  
Oconnell@rlf.com  
Attorneys for Defendants

Dated: September 8, 2006

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DISTRICT OF DELAWARE**

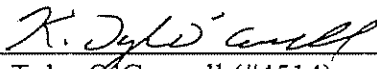
**CERTIFICATE OF SERVICE**

I hereby certify that on September 8, 2006, I electronically filed the foregoing document with the Clerk of Court using CM/ECF which will send notification of such filing(s) and Hand Delivered to the following:

Kester I.H. Crosse, Esquire  
Williams & Crosse  
1214 King Street  
Suite 300  
Wilmington, DE 19801

I hereby certify that on September 8, 2006, I have sent by U.S. Regular Mail, the foregoing document to the following non-registered participants:

Anne T. Sulton, Esquire  
Post Office Box 2763  
Olympia, WA 98507

  
\_\_\_\_\_  
K. Tyler O'Connell (#4514)  
Richards, Layton & Finger, P.A.  
One Rodney Square  
P.O. Box 551  
Wilmington, Delaware 19899  
(302) 651-7700  
OConnell@rlf.com